FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

December 9, 2005

In Reply Refer To:
Explorer Pipeline Company
Docket No. IS06-38-000

Explorer Pipeline Company
P.O. Box 2650
Tulsa, OK 74101

Attention: Curtis L. Craig
General Counsel & Corporate Secretary

Reference: Revised Bid Pricing Program and New Flexible Capacity Program
FERC Tariff No. 72

Ladies and Gentlemen:

1. On November 10, 2005, Explorer Pipeline Company (Explorer) filed FERC Tariff No. 72, canceling FERC Tariff No. 70, to revise its existing bid pricing program from one that sets a market-clearing price at the lowest bid that all shippers pay to a true open bid process where shippers pay their bid price. Explorer also proposes to establish a flexible capacity program and requests the proposed tariff become effective December 11, 2005. No protests were filed. For reasons given below Explorer's FERC Tariff No. 72 is accepted in part and rejected in part.

2. Under the Flexible Capacity Program - Item No. 111, Flexible Capacity Rates, Explorer proposes to allow a shipper to submit a nomination from, hypothetically, origin A to destination C. However, Explorer explains that market opportunities may develop at intermediate destination B that is more attractive to the shipper. Explorer explains that currently a shipper may change the applicable destination to the intermediate point B. In that case, Explorer only charges the shipper the applicable rate from A to B. However, Explorer further explains that the shipper by requiring a shorter haul and paying a lower rate will get credit only for the shorter haul when the line segment is capacity constrained. Explorer posits that the shipper's loss of allocated space during periods of proration may deter the shipper from responding efficiently to changes in competitive dynamics in end-use markets. Explorer states

that under this voluntary proposal, the shipper receives full credit under Explorer's proration policy for all barrels committed to and paid for destination C whether actually shipped to C or a point short of C. Most important, continues Explorer, that shipper as a result would have the flexibility to deliver barrels to any point short of C without sacrificing its entitlement to allocated capacity to C during periods of proration. Explorer emphasizes that the program is voluntary.

3. Explorer’s currently effective FERC Tariff No. 70, the Bid Pricing Program - Item No. 113, Bid Rates, applies to monthly capacity of 10% or less. All successful bidders pay the market clearing price, which is set by the lowest bid received, in addition to the base rates. Explorer states that it observed over the last year that shippers offered high rate bids for relatively large volumes and low rate bids for relatively low volumes. As a result, the current program does not quantify the elasticity of the supply and demand in Explorer's markets.

4. The proposed bid pricing program revises how Explorer awards the capacity. Rather than charging all successful bidders the same market clearing price, Explorer proposes to charge winning bidders the rate they have bid, and award capacity on an incremental bid revenue per barrel basis. Shippers bidding at higher incremental rates will have a higher priority over lower rate bids. By implementing a true bid program, Explorer believes that it can make even more efficient pricing decisions by basing such decisions on the demand for transportation of its customers through an open and nondiscriminatory bid process.

5. Explorer claims that the changes to the bid pricing model do not violate section 2 of the Interstate Commerce Act’s (ICA) prohibition against unjust discrimination among shippers under substantially similar circumstances and conditions It contends it will award the capacity to those shippers who value it the most.

6. Section 2 of the ICA reads:

> If any common carrier subject to the provisions of this part shall, directly or indirectly, by any special rate, rebate, drawback, or other device, charge, demand, collect, or receive from any person or persons a greater or less compensation for any service rendered, or to be rendered, in the transportation of passengers or property, subject to the provisions of this part, than it charges, demands, collects, or receives from any other person or persons for doing for him or them a like and contemporaneous service in the transportation of a like kind of traffic under substantially similar circumstances and

> conditions, such common carrier shall be deemed guilty of unjust discrimination, which is hereby prohibited and declared to be unlawful.

7. The Commission's concern in considering Explorer's bid pricing proposal is to ensure equality of pricing for shipments subject to similar costs and competitive conditions. Differential pricing can be introduced where there are dissimilarities in the key variables of cost and competitive conditions. It can be argued that shippers choosing to participate in Explorer's bid pricing program are not similarly situated with other shippers who elect not to participate, and no discrimination results from that differential pricing between the bidding and non-bidding groups of shippers, as under Explorer's current market clearing price program. Nothing has been offered by Explorer, however, to show that under the proposed bid pricing program those who are successful bidders are not similarly situated among themselves and that, thus, no discrimination results from charging each of them a different price for the same service.

8. The Commission concludes that proposed Item No. 113, Bid Rates, would allow Explorer to charge different rates for like and contemporaneous service in the transportation of a like kind of traffic, under substantially similar circumstances and conditions. Accordingly, the proposal is deemed to result in unjust discrimination, expressly prohibited and declared unlawful under section 2 of the ICA. Therefore, Item No. 113, Bid Rates, is hereby rejected. Within 15 days of the date this order issues, Explorer must file a tariff removing the proposed Item No. 113, Bid Rates and notify all subscribers of this filing .

9. Explorer's proposed FERC Tariff No. 72 is accepted in part and rejected in part. FERC No. 72 is permitted to become effective on December 11, 2005, as proposed, except for the proposed Item No. 113, Bid Rates, discussed above.

By direction of the Commission.

Magalie R. Salas,
Secretary.